BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

COMMENTS OF THE RURAL OKLAHOMA TELECOMMUNICATIONS COALITION

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INTRODUCTION

The Rural Oklahoma Telecommunications Coalition (ROTC)[1] appreciate this opportunity to provide initial comments to the Federal-State Joint Board on Universal Service (Joint Board) request for comments in the Public Notice released on August 16, 2004 in CC Docket No. 96-45.[2] ROTC is an association of rural incumbent local exchange carriers (ILECs) which have been providing telecommunications services to primarily rural customers originally neglected by the Regional Bell Operating Companies and the former GTE. The ROTC Companies, either themselves or through affiliates of the ROTC Companies, operate in more than eight (8) states, providing an array of telecommunications and information services, including but not limited to telecommunications, internet service, video and other broadband services. The ROTC Companies are family owned companies or where people coming together to form telephone cooperatives to initially provide basic service to their customers and members. Each ROTC Company serves rural and high-cost areas within the state of Oklahoma and meets the definition of a rural telephone company contained in 47 U.S.C. §153(37). Each ROTC Company is designated as an eligible telecommunications carrier (ETC) for its service area or areas.

The Joint Board seeks comments on the following topics:[3]

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[1] The ROTC member companies are: Atlas Telephone Company, Beggs Telephone Company, Bixby Telephone Company, Canadian Valley Telephone Company, Carnegie Telephone Company, Central Oklahoma Telephone Company, Cherokee Telephone Company, Chickasaw Telephone Company, Cimarron Telephone Company, Cross Telephone Company, Hinton Telephone Company, KanOkla Telephone Association, Lavaca Telephone Company d/b/a Pinnacle Communications, Medicine Park Telephone Company, Oklahoma Western Telephone Company, Oklahoma Telephone and Telegraph Company, Panhandle Telephone Cooperative, Pine Telephone Company, Pioneer Telephone Cooperative, Pottawatomie Telephone Company, Salina-Spavinaw Telephone Company, Shidler Telephone Company, South Central Telephone Company, Southwest Oklahoma Telephone Company, Terral Telephone Company, Valliant Telephone Company.

[2] *See Federal-State Joint Board on Universal Service seeks comments on certain of the Commission's rules relating to high-cost universal service support*, CC Docket No. 96-45, Public Notice, FCC 04J-2 (rel. August 16, 2004).

[3] Id.

- whether the Commission should continue to use the statutory definition of "rural "telephone company" to determine which carriers are rural carriers for high-cost universal service support purposes;
- the appropriate structure of universal service support mechanisms in areas served by rural carriers, including the cost basis of support and the method of calculating support and;
- whether the Commission should retain, modify, or eliminate section 54.305 of its rules.

The ROTC hereby submits its comments regarding the high-cost universal support mechanisms for rural carriers and the appropriate rural mechanism to succeed the five-year plan adopted in the *Rural Task Force Order*.[4] The ROTC further comments on the definition of "rural telephone company" for high-cost universal service support purposes and the consolidation of multiple study areas owned or controlled by a single entity within a state.[5]

I. COST BASIS OF SUPPORT

The ROTC will not dwell on the history and background of how universal service policy has evolved from ILEC's historical cost recovery systems, but rather would refer to OPASTCO's White Paper "Universal Service in Rural America: A Congressional Mandate at Risk" released January 21, 2003, which very adequately summarizes how the industry got to this point from the concept stated in the Communications Act of 1934 to the Telecommunications Act of 1996,

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[4] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 04-125 (rel. June 28, 2004) (*Referral Order*) (citing *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) (*Rural Task Force Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. June 1, 2001)).

which further expanded the purpose of federal universal service funding for companies providing service to rural, insular, and high cost areas.

The 1996 Act's twin goals are to promote competition and preserve and advance universal service. To achieve these goals, Congress enacted Section 254 and 214(e) of the 1996 Act to establish a universal service system that would be sustainable in a competitive environment. Congress delegated to the FCC the responsibility to adopt rules to implement Sections 254 and 214(e) of the 1996 Act, based upon the recommendations of the Joint Board. Section 254(b) of the 1996 Act establishes the following universal service principles to guide the FCC in adopting rules and policies:

> (1) QUALITY AND RATES. Quality services should be available at just, reasonable, and affordable rates.
>
> (2) ACCESS TO ADVANCED SERVICES. Access to advanced telecommunications and information services should be provided in all regions of the Nation.
>
> (3) ACCESS IN RURAL AND HIGH COST ARES. Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for services in urban areas.
>
> (4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS. All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
>
> (5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS. There should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.
>
> (6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES. Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

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[5] *Referral Order*, FCC 04-125 at paras. 11-12.

(7) ADDITIONAL PRINCIPLES. Such other principles are as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

In addition to the seven specific principles, Section 254(b) allows the Joint Board and the Commission to establish additional principles that they determine "are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act."

The FCC has consistently held that universal service must be implemented in a competitively neutral manner.

A principle purpose of Section 254 of the Act is to create mechanisms that will sustain universal service as competition emerges. We expect that applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers.[6] As a result the Joint Board and FCC defined an eighth principle:

(8) COMPETITIVE NEUTRALITY. Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules should neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.[7]

With these principles and policies in mind, the ROTC makes these comments. In its First Report and Order, the Commission determined that USF support should be based upon a forward looking economic cost (FLEC) model for all ILECs. Subsequently, in its Rural Task Force Order, the Commission ordered that USF support for rural ILECs be based upon the existing,

[6] Report and Order at para. 50.

[7] Federal-State Joint Board on Universal Service, CC docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, para. 47 (1997). (Universal Service First Report and Order)

embedded cost methods until 2006 since it did not have sufficient information to develop a FLEC model that could appropriately estimate costs in rural areas.

In this proceeding, the Joint Board revisits the question of the cost basis of USF support for rural ILECs. The Joint Board asks whether FLEC-based USF support applied to rural ILECs will be a "viable long term goal for areas served by rural ILEcs"[8] and whether a FLEC mechanism "more efficiently and effectively achieves the Acts [universal service] goals".[9]

ROTC opposes the use of a FLEC model to determine the cost to provide universal service in rural areas. FLEC models were deemed ineffective in the *Rural Task Force Order* and nothing has changed in the intervening years. ROTC believes questions regarding the efficiency and effectiveness of a FLEC-based cost calculation for USF can be answered in part by a comparison of FLEC-based USF support in rural versus non-rural areas.

A. FLEC MODELS ARE UNCHANGED FROM FIVE YEARS AGO

As the Joint Board states, little if any refinement of the various FLEC models has been performed in the intervening years from the initial *Rural Task Force Order*. There are no facts in the record to support the argument that an unchanged FLEC model will now support the goal of an efficient or effective USF program. ROTC continues to believe that a theoretical model can never produce results that support the goals of the statutes and the Commission's rules.

B. ANY MODEL IS BIASED AND PRODUCES GENERALIZED RESULTS

Every model is built with structural and input bias. The FLEC model is no exception. Although the FLEC model may be useful to demonstrate that rural areas typically cost more to serve than non-rural areas it will typically fail to account for more specific cost characteristics in diverse settings. The Rural Task Force demonstrated that the rural areas of the nation are diverse

[8] Id. Para 20
[9] Id. Para 21

and rural carriers do not serve homogenous markets. By necessity, a model produces generalized rather than precise results. A model that assumes customers are all within a predetermined distance of roads where feeder and distribution cable might be theoretically placed fails to capture the cost of facilities that must be placed thousands (or tens of thousands) of feet from the main road. A model that assumes carriers have the opportunity to share duct space or poles does not account for those carriers whose facilities are the sole occupants of ducts and poles. Rarely are there additional carriers available in rural and high cost areas to share ducts and poles. Since a model by definition is intended to produce generalized results it will unlikely ever produce the real cost to provide services by a new entrant or the incumbent. Assuming a model could be developed that could attempt to capture such diversity, it would move from its intended generalized function to a feasibility study of what it would actually cost to provide service within a specific service area. Such a policy would only create an incentive for a carrier, either a new entrant or an incumbent, to build facilities if its actual cost were less than the model costs.

The Rural Task Force also demonstrated that the FLEC model may produce cost results that may exceed or fall short of actual cost experience. Assuming a FLEC model produces results that are less than the actual cost to serve a particular area, the ILEC suffering from the shortfall may no longer have the financial ability to continue to serve the territory. Assuming a FLEC model produces results that are greater than the actual cost to serve a particular area, the carrier will receive a windfall.

In the case of a windfall, a policy should be established that no carrier should receive an amount of USF support that exceeds its actual embedded cost for the provision, maintenance, and upgrading of facilities for the supported universal service. In the case of a shortfall, a carrier

would use embedded cost to demonstrate that the public policy goals for universal service are not being met. In either case embedded cost becomes the ceiling and the floor for support.

USF support is a very significant source of revenue for many rural ILECs. For many of the ROTC companies the USF support relied upon to provide the supported services to its customers exceeds 50% of total revenues. If a FLEC model determines that an RBOC's USF needs are only 50% of its pervious amount, the RBOCs revenues may be reduced by only a few percentage points. If, however, a FLEC model determines that a rural ILEC's USF needs are only 50% of its pervious amount, it is probable that the ILEC's revenues would be reduced by 25%. The total of the revenues lost can not be made up by increasing end user rates, since such an increase could result in a doubling (or more in some cases) of the end users rates. This then would lead to the end user abandoning the ILEC's service for a lower cost alternative provider which would drive up the cost per end user served by the ILEC, which would lead to increased rates and the cycle continues.

C. USE OF EMBEDED COSTS MEETS THE OBJECTIVES OF THE ACT

The Act at section 254 (e) provides that any carrier that receives universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. This simply means that the dollars received must be dollars actually spent on the provision, maintenance and upgrading of facilities and services. If embedded costs are the floor and embedded costs are the ceiling, then one can conclude that embedded costs are the adequate standard to achieve the Act's universal service goals. The inherent bias in any discussion comparing embedded costs versus those produced by a FLEC model is the assumption that embedded costs do not encourage effective and efficient deployment of networks that serve the public interest and provide the supported services. ROTC

agrees with the Joint Board that the USF process involves two equally critical steps – the calculation of costs and the allocation of support based upon those costs. Leaving the second half of the USF equation for later comment, the replacement of the judgment of an owner with a fiduciary stake in the deployment of an efficient network with the judgment of a model's author does not address the policy question of how much support is sufficient to produce the desired result – affordable quality service in rural, insular, and high cost areas of the nation. The current system relying upon embedded costs provides its own incentives for rural carriers to be efficient and effective when making investment decisions.

ROTC urges the Joint Board to conclude that embedded costs are an effective and efficient mechanism for supporting universal service. The rural ILECs build networks that need to be built to provide services demanded by end users rather than networks that are inefficient and ineffective.

II. A COMPARISON OF COSTS SHOULD BE PERFORMED ON A NATIONWIDE STANDARD

Non-rural ILECs subject to the FLEC-based cost standard are also subject to a comparison of statewide, rather than nationwide, average cost as the threshold to qualify for any USF support. Non-rural ILECs qualify for USF support only if the statewide average FLEC-based cost per line exceeds 135% of the national FLEC-based average cost per line. Most non-rural ILECs subject to this rule have costs that drive the statewide average, i.e., their dominant position within a state produces costs that are at or near the statewide average. It is likely that high-cost rural ILECs within certain states that would fail to qualify under a statewide cost comparison, but nevertheless have costs that greatly exceed nationwide standards, would be cut off from federal USF support.

Such a policy would mean consumers served by rural ILECs in states that no longer qualify for USF support as a result of the use of the 135% threshold would be at risk of losing necessary USF support to keep local rates affordable. The affected consumers would be penalized for living in a rural area of an otherwise relatively low cost state. Once again, ROTC refers to the problems rural and high cost carriers are faced with – a lack of scale and scope economies. Since the Commission is charged with ensuring nationwide affordable rates, the only appropriate comparison is nationwide costs.

III. AN EFFICIENT METHOD TO MODERATE GROWTH IN THE USF IS BY MODIFYING THE SECOND HALF OF THE USF EQUATION

The Joint Board has correctly summarized the USF equation as two separate parts: the identification of costs followed by the calculation of support based on costs. ROTC supports the use of embedded costs for all carriers as the most efficient and effective first part of the method to determine USF support. Any carrier seeking public or quasi-public support to provide universal services is obligated under section 254 (e) of the Act to assure the public that it is using the support for its intended purposes.

As the Joint Board, the Commission, and the Courts wrestle with the sometimes competing goals of universal service and a competitively neutral USF program, the question that must be answered is whether the USF support mechanisms provide specific, predictable and sufficient mechanisms to preserve and advance universal service.

One area already addressed by commenting parties in the Notice of Proposed Rulemaking issued under FCC 04-127 dealt with the scope of USF support. The Joint Board recommended, *inter alia*, a "primary line" system whereby consumers choose the primary carrier that would

then receive USF support targeted to the consumer or perhaps a billing address. In this proceeding, the Joint Board at least partially revisits the issue and ROTC will address it herein.

Most rural ILECs and wireless carriers oppose the primary line approach, and with good reason. Many rural ILECs support a policy that requires all ETCs, incumbent or competitive, to demonstrate their own costs. However, to the extent that competitive ETC costs can not be determined with the desired precision to support public policy and the Commission chooses to continue to rely upon an ILEC's embedded costs, ROTC believes a sound approach that already exists within current USF rules is an appropriate method of calculating competitive ETC (CETC) support in the second part of the USF equation.

Current USF support rules limit the amount of per-line support for ILECs with greater than 200,000 access lines. [10] This rule is based on the fact that larger ILECs enjoy economies of scale and scope and an enhanced ability to average high costs over many more services and end users that mitigates the need for substantial USF revenue support. ILECs with fewer than 200,000 access lines are have less ability to achieve economies of scale and scope and certainly can not average their inherent high costs and thus are provided with additional USF relative to a larger ILEC. In practice, where two rural ILECs have very similar cost characteristics, the rural ILEC with more than 200,000 access lines will receive significantly less USF support than an ILEC with fewer than 200,000 access lines.

Application of this existing rule to all carriers who receive USF support would be competitively and technologically neutral. This existing rule was established on sound principles and will not require the development of new cost studies or additional algorithms to address wireless CETC costs and USF support.

CONCLUSION

Today, thanks to capital funds available from many sources and universal service support, the ROTC are able to provide to their customers services including, voice grade access to the public switched network, local usage, dual tone multi-frequency signaling, single party service, access to emergency services, access to operator services, access to interexchange service, access to directory assistance and toll limitation for qualifying low income consumers. We believe all of these services are being offered to the rural customers at quality equal to or greater than services received by customers in urban areas and at rates comparable to those paid by their urban counterparts for similar services. In addition, many of the rural companies have chosen to further invest in their communities by providing Internet, DSL, long distance, cable television, and facility leasing services that, in most cases, would not have been available otherwise in the areas served. The investments necessary for the rural companies to provide these services to their rural customers was made based, at least in part, on the reliance on the universal service funds received and those anticipated to be received.

The Rural Oklahoma Telephone Companies are concerned about the growth of the fund and its continued viability to ensure the objectives of the Telecommunications Act of 1996 as set forth in Section 254(b).

Specifically, the ROTC embraces the following policy principles.

1. Rural Consumers should have affordable telecommunications services, comparable in quality and price to urban areas.

2. Funding should be sufficient to provide for critical infrastructure in rural areas.

3. The universal service fund is a scarce national resource. Therefore, supporting multiple carriers is in the public interest only when benefits exceed cost.

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[10] 47 CFR 36.631(d)

4. The universal service fund should not be used to create uneconomic competition.

5. All carriers receiving support should be held to similar service obligations and regulatory standards.

6. Funding should come from the broadest base of providers and services.

The ROTC respectfully requests that the Joint Board adopt the recommendations set forth above. These recommendations are designed to protect the sustainability of the federal Universal Service Fund and bring real benefits, including a sustainable competition, in rural areas throughout our great Nation.

Respectfully submitted this 15th day of October, 2004.

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